

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

JOHN K. WARNER,

Plaintiff,

v.

CASE NO. 1:16-01307-CV  
HON. JANET T. NEFF

COUNTY OF MUSKEGON AND  
MARK EISENBARTH, BENJAMIN E. CROSS,  
SUSIE HUGHES, ROBERT SCOLNIK,  
MARVIN R. ENGLE, CHARLES NASH,  
JEFF LOHMAN, TERRY J. SABO, AND  
KENNETH MAHONEY, all in their  
individual capacities, and the  
MUSKEGON COUNTY BOARD OF  
COMMISSIONERS,

**Defendants' Pre-Motion  
Conference Request**

Defendants.

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**DEFENDANTS' PRE-MOTION CONFERENCE REQUEST**

Defendants Benjamin E. Cross, Susie Hughes, Robert Scolnik, Marvin R.

Engle, Charles Nash, Jeff Lohman, Terry J. Sabo, and Kenneth Mahoney request the opportunity to file a dispositive motion pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6) based upon the following:

1. On May 25, 2016, the County Administrator suspended Plaintiff's employment as the Director of the Muskegon County Department of Public Works and recommended him for discharge on the basis that he was unable to properly execute his duties as evidenced by his unprofessional conduct during a Solid Waste Planning Committee meeting, his creation of a hostile work environment for members of County staff, and for acting contrary to the statutory authority and bylaws of the Solid Waste Planning Committee.

2. In keeping with the Rules of the Muskegon County Board of Commissioners (**Ex. 1**), Plaintiff was accorded a pre-termination hearing before the Chairperson of the County Board of Commissioners. The Chairperson affirmed the County Administrator's recommendation for discharge. (**Ex. 2**).

3. Plaintiff appealed the Chairperson's decision to the County Board of Commissioners and was granted a hearing in accordance with the Rules. During this two-day hearing, Plaintiff was represented by counsel and presented testimony and evidence in support of his position. The Board affirmed the Chairperson's decision to terminate Plaintiff's employment. (**Ex. 3**).

4. Plaintiff's Section 1983 claim (Count II) against the Board members

named above should be dismissed on the basis of qualified immunity because Plaintiff has alleged nothing more than conclusory allegations against them, and the facts alleged, even when taken as true, do not show that the Commissioners' actions violated Plaintiff's clearly established constitutional rights or were otherwise objectively unreasonable in light of clearly established law at the time. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007); *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1992); *Anderson v. Creighton*, 483 U.S. 635, 639-40 (1987); *Peete v. Metro Gov't of Nashville v. Davidson Cnty.*, 486 F.3d 217, 219 (6th Cir. 2007).

5. Plaintiff's claims should also be dismissed because he was accorded all of the process that was due under the law. *See Loudermill v. Cleveland Bd. of Educ.*, 470 U.S. 532 (1985); *Yashon v. Hunt*, 825 F.2d 1016, 1023-24 (6th Cir. 1987); *Dubuc v. Green Oak Twp.*, 642 F.Supp.2d 694, 700 (E.D. Mich. 2009).

6. Absent a viable federal claim against the individual defendants, this Court does not have jurisdiction over Plaintiff's state law claims.

7. Concurrence was requested through detailed correspondence and phone conference on December 20, 2016, and has been denied.

WHEREFORE, Defendants respectfully request that this Court schedule a pre-motion conference.

/s/ Laura Bailey Brown (P79742)  
By: Laura Amtsbuechler (P36972)  
Laura Brown (P79742)  
Attorneys for Defendants

## PROOF OF SERVICE

The undersigned certifies that the foregoing was served upon all parties to the above cause to each of the attorneys/parties of record herein at their respective addresses disclosed on the pleadings on December 28, 2016.

BY: ☐ U.S. Mail ☐ Telefacsimile  
☐ Hand Delivered ☐ Overnight  
courier  
☐ Federal Express ☒ Other: ***E-file***

Signature: s/ Lori A. Gazdag